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No. 84-2021

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MARTIN W. McGREEVY,

Petitioner,

vs.

THE DANNON COMPANY INC., BEATRICE FOODS COMPANY, JUAN E. METZGER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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* * *

COUNTER STATEMENT OF THE CASE

This is an action in which Petitioner claims that Respondent, The Dannon Company, Inc. ("Dannon"), discriminated against him (1) on account of

his age in violation of the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq ("A.D.E.A.") and (2) on account of his religion (Roman Catholic) in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 e. et seq ("Title VII").

Pursuant to a stipulation between the parties (Appendix A-1), the A.D.E.A. action was tried before a jury and the Title VII action was tried by the District Court. The stipulation contained a detailed recital of agreed upon facts in connection with the religious discrimination claim and also provided that such stipulated facts would be supplemented by such evidence as the Court found otherwise admissible in the A.D.E.A. case tried by the jury.

At the close of the evidence, the Court found that Petitioner had failed

to submit evidence from which the jury could find that age was a factor in his failure to obtain any position and directed a verdict for Dannon. The Court also found that Petitioner had failed to prove denial of any position on account of his religion. The Court of Appeals affirmed both determinations.

REASONS FOR DENYING THE PETITION FOR A WRIT

There is nothing about this case and the proceedings below that are special and important enough to justify review by this Court. To the contrary, the dispute between the parties was essentially factual in character and involved no legal issues of any consequence.

To the extent the Petition raises a question about the right to a trial by jury in a Title VII action, an issue that has not been determined by this Court, it is a sufficient answer in this case that the Title VII cause of action was tried by the Court rather than a jury pursuant to a stipulation between the parties (App. A-1).

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorney for Respondent

Of Counsel
Robert M. Schanzer

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT

X

MARTIN W. McGREEVY,

Plaintiff,

-against-

THE DANNON COMPANY, INC., BEATRICE FOODS, JUAN E. METZGER,

Defendants.

X

Civil No: 82-1911 (ILG)

(Judge Glasser)

PRETRIAL STIPULATION

Title VII cause of action

The attorneys for plaintiff and attorneys for defendants hereby stipulate as follows:

A. Procedural Stipulations

1. The action against the Defendant, Juan E. Metzger, will be dismissed.

2. The claim that Plaintiff was discriminated against on account of his religion is to be tried by the Court.

3. The claim that Plaintiff was discriminated against on account of his age is to be tried by a jury.

4. Because this action involves two separate claims of discrimination, one of which is triable by the Court and one by a jury, and in order to avoid the complications arising out of the fact that evidence concerning certain events may be admissible with respect to the claim triable by the Court and not admissible in connection with the claim triable by jury, the parties have agreed as follows. The claim will be tried before the jury as if the only claim in the case were age discrimination. The claim of religious discrimination will be submitted to the

Court on the basis of a set of stipulated facts, except that such stipulated facts will be supplemented by such evidence as the Court finds otherwise admissible in the age discrimination case tried before the jury.

B. Stipulated Facts For Submission Of Religious Discrimination Claim To Court

1. Martin McGreevy is Plaintiff herein. ~~He is fifty three years of age. His birth date is November 11, 1930.~~ He is Roman Catholic and a citizen of the United States. He resides at 85-07 60th Road, Elmhurst, in the County of Queens, State of New York.

2. The Dannon Company ("Dannon") is a domestic Corporation with principal offices at 22-11 38th Avenue in Long Island City, in the County of Queens, State of New York. Dannon manufactures, sells and distrib-

utes yogurt and yogurt related products. Dannon is engaged in interstate commerce and employs more than twenty people. As such, it is an employer subject to the requirements of Title VII of the Civil Rights Act of 1963, ~~of the Age Discrimination in Employment Act of 1967~~ as amended ~~and to the Fair Labor Standards Act of 1947.~~

3. Plaintiff was hired by Dannon on November 9, 1964 as Assistant Office Manager at a salary of $5,200.00 per year.

4. Plaintiff's current title is Accounts Payable Supervisor and he is in charge of a group of three employees, including himself, who are responsible for coding invoices presented for payment, presenting those invoices for electronic data processing and instructing that checks be written. The work is reviewed before checks are sent out

and is subject to review by the Dannon's Chief Financial Officer.

5. (a) In plaintiff's original position, he was responsible for payroll, the voucher register, accounts payable, ageing accounts receivable, paying state and local taxes and supervising employees working on drivers' route sheets.

(b) In 1973, plaintiff requested that his payroll function be assigned to another person because his work load had increased due to Company expansion. Fred Einhorn was hired on April 9, 1973 to do payroll.

(c) In 1974, plaintiff requested that the ageing of accounts receivable be assigned to Fred Einhorn when Einhorn was relieved of doing payroll.

(d) In 1977, the responsibility for supervision of employees

working on drivers' route sheets was reassigned to another employee when the work was relocated to another area of the Long Island City office.

(e) Plaintiff's current responsibilities are limited to coding accounts payable vouchers of invoices.

6. Plaintiff is listed on the company roster as Group Leader, Accounts Payable.

7. Plaintiff received a Bachelor of Business Administration Degree (BBA) from Pace College in 1965. His area of concentration was accounting.

*8. In early 1972, Jean Dramis, the Office Manager at Dannon, retired. Plaintiff was not promoted to Office Manager.

*9. (a) The job of Office Manager was given to Mr. Arnold Fiedelman, who later was named Control-

ler. Fiedelman was hired on February 2, 1972.

(b) The title of Office Manager was eliminated in 1977.

(c) Fiedelman is Jewish.

*10. (a) Fred Einhorn was hired as assistant controller on April 9, 1973.

(b) Einhorn is Jewish.

*11. Einhorn and Fiedelman both started working at Dannon at salaries higher than that then being received by Plaintiff.

*12. (a) Einhorn received computer training at Dannon's expense during 1973, his first year of employment.

(b) Plaintiff did not receive training during that same period of time.

(c) Since Einhorn received his computer training, no other employee has received similar training.

13. Einhorn left Dannon's employment on March 25, 1977.

*14. (a) On December 4, 1978, James Schilling was hired by Dannon as Chief Financial Officer.

(b) ~~Schilling was born on May 10, 1942.~~

(c) Schilling is Catholic.

15. (a) On June 4, 1979, Stanley J. Kronstadt was hired by Dannon as corporate accounting manager.

(b) ~~Kronstadt was born on December 20, 1933.~~

(c) Kronstadt is Jewish.

(d) Kronstadt's weekly salary in 1980 was $807.70 and in 1981, it was $904.00.

*16. On November 30, 1979, Fiedelman's employment terminated.

17. On May 1, 1980, Schilling's employment terminated and Kronstadt became Chief Financial Officer.

18. (a) In January, 1980, Michael Cardillo was hired by Dannon as a Senior Accountant at a salary of $452.00 per week.

(b) Cardillo was hired by Kronstadt. Cardillo had previously worked for the same company as Kronstadt for a period of approximately four years.

(c) ~~Cardillo's date of birth is October 10, 1935.~~

(d) Cardillo is the Accounting Department's Supervisor and directly supervises Plaintiff and his Accounts Payable group.

(e) Cardillo is Catholic.

19. (a) On June 23, 1980, William Fahey was hired by Dannon as a senior accountant.

(b) ~~Fahey was born on November 2, 1940.~~

(c) Fahey is Catholic.

(d) Fahey's starting salary was $433.00 per week. In 1983, Fahey's salary was $575.00 per week.

20. (a) On March 9, 1981, Dannon hired Eugene Cornier as a staff accountant.

(b) ~~Cornier was born on October 7, 1935.~~

(c) Cornier is Catholic.

(d) Cornier's starting salary was $325.00 per week. In 1983, Cornier's salary was $415.00 per week.

21. (a) Grace DePietro is Dannon's accounts receivable supervisor.

(b) ~~Grace DePietro was born on May 13, 1921.~~

(c) Grace DePietro is Catholic.

(d) Grace DePietro has received salary increases in every year since 1979.

22. (a) On May 4, 1981, Dannon

hired Marc Schiffman as a Staff Accountant.

(b) ~~Schiffman's date of birth is June 26, 1946.~~

(c) Schiffman is Jewish.

(d) Schiffman's starting salary was $423.00 per week. He received a salary increase to $453.00 per week in May, 1982 and to $480.00 per week on January 1, 1983.

23. Plaintiff's salary for 1981 was $495.00 per week.

24. Plaintiff did not receive any salary increase in 1982 and 1983.

25. Plaintiff received written performance evaluations for 1981 and 1982.

26. Plaintiff filed a complaint alleging religious ~~and age~~ discrimination with the Equal Employment Opportunity Commission ("EEOC") on June 17, 1981.

27. On March 31, 1982, the EEOC issued a determination of no probable cause with respect to the complaint of religious discrimination.

28. The complaint in this action was filed with the United States District Court on July 1, 1982.

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